IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13892 of 2006
With
SPECIAL CIVIL APPLICATION No. 13893 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MATRUDHARA TRUST - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR AJ SHASTRI for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,2,3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 19/07/2006

ORAL JUDGMENT

1. Rule. Learned AGP Shri Siraj Gori waives service of notice of rule on behalf of respondents,

appearing on advance copy at the request of the Court.

2. Short question that has been raised in these petitions is regarding the legality of an order dated 14-6-2006. The petitioner is running an Ashram Shala. For making recruitment of two teachers and one helper in the kitchen, permission was granted by the Government. The petitioner therefore, held the interviews after giving advertisement in the Newspaper. The Interview Committee included a representative of the Government. Eventually, selections were made which according to the petitioner were also approved by the Deputy Commissioner of Tribal Development Department, Government of Gujarat. Subsequently, however, without any further communication, the Director of the said department was, by the impugned order, pleased to cancell the entire selection process and also recall the approval of the Government to the appointments. Though the petitioner has stated in the petition that once the Deputy Director

decided to grant the approval, respondents thereafter, could not have recalled the same by reviewing the earlier position, such a point has not been canvassed before this Court with any degree of seriousness. With respect to the powers of the Government therefore, to inquire into the nature of appointment and legality of the selection procedure, there is no dispute. The only question is whether the respondents could have passed the impugned order without hearing the petitioner. It cannot be denied that the impugned order is adverse to the petitioner. Earlier at some stage, Government authorities were of the opinion that selection process should be approved. Subsequently, thereafter, if the Competent Authority wanted to deny such a permission, at-least the petitioner should have been given a reasonable opportunity to represent its case. I find that the respondents have relied on some material collected by the Vigilance Officer who was given the task of inquiring into the nature of selection process. The authority also found certain defects and was

of the opinion that the Newspaper in which the advertisement was issued did not have sufficiently wide circulation. All these are issues on which the petitioner should have been given an opportunity to make its representation.

3. In the result, the impugned order is quashed only on the ground that the petitioner was not heard before passing such adverse order. It will of-course be open for the respondents to pass a fresh order in accordance with law after issuance of a show cause notice in this regard. This may be done expeditiously and preferably within a period of two months from the date of receipt of a copy of this order, subject to cooperation from the petitioner. Until such time fresh orders are passed, both sides shall maintain status-quo.

4. With these directions, the petitions are disposed of. Rule made absolute with no order as to costs.

Direct service is permitted.

(Akil Kureshi,J.)

(raghu)